

Exhibit 2

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<p style="text-align: right;">Page 82</p> <p>1 A. Good afternoon.</p> <p>2 Q. Following our break from lunch, is there</p> <p>3 anything about your previous testimony that you'd like to</p> <p>4 supplement or add to?</p> <p>5 A. No, I'm okay. 13:22:40</p> <p>6 Q. All right. I'd like you to look at an</p> <p>7 exhibit that's been previously marked as number 173, and</p> <p>8 if you could tell me whether or not you recognize</p> <p>9 Exhibit 173.</p> <p>10 A. I don't remember the specific email, but it 13:23:12</p> <p>11 certainly looks like email to me in reply from some email</p> <p>12 in reply to some other email. So it looks like -- it</p> <p>13 looks like some email thread in 2005 that I was on.</p> <p>14 Q. With respect to the people listed in Robert</p> <p>15 Griesemer's email as having VM experience, which of them 13:24:18</p> <p>16 worked on Android?</p> <p>17 MR. PAIGE: Object to the form.</p> <p>18 THE WITNESS: So let's see here. Several</p> <p>19 people have intimate VM knowledge. I'm reading from the</p> <p>20 thing here as I try and figure out. So of these 13:24:45</p> <p>21 people -- so basically the people he mentions in this</p> <p>22 first paragraph.</p> <p>23 Q. BY DR. PETERS: That's right.</p> <p>24 A. I don't believe anyone he lists here ever</p> <p>25 contributed code to the Android project. 13:25:11</p>	<p style="text-align: right;">Page 84</p> <p>1 So, I mean, that appears to at least</p> <p>2 summarize my belief at that time as I wrote in that</p> <p>3 email.</p> <p>4 Q. So what's wrong with the GPL license --</p> <p>5 MR. PAIGE: Object to the form. 13:27:07</p> <p>6 Q. BY DR. PETERS: -- from your perspective?</p> <p>7 A. So the GPL is viewed as a viral or</p> <p>8 ineffective license by some people. It is -- it</p> <p>9 generally has some fairly complex requirements for</p> <p>10 compliance, and when you combine different code, the 13:27:29</p> <p>11 combined work, if it's not GPL, is not compliant. It has</p> <p>12 requirements for open sourcing combined works and so on.</p> <p>13 This is something that OEMs or third-party</p> <p>14 application developers who may want to develop commercial</p> <p>15 applications may find concerning, being forced to release 13:27:55</p> <p>16 their source code. So it, you know, is less desirable,</p> <p>17 you know, for those people.</p> <p>18 Q. Besides the Linux kernel of Android, would</p> <p>19 you say there's any significant part of Android that</p> <p>20 Google has released under the GPL? 13:28:19</p> <p>21 A. I think WebKit might be dual or triple</p> <p>22 licensed under LGPL. I'm not -- I would have to verify</p> <p>23 that. If that's the case, that would probably be the</p> <p>24 only significant part of user space. You know, the Linux</p> <p>25 kernel clearly is GPL. 13:28:45</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Did they ever, any of the people listed here,</p> <p>2 contribute any guidance to the Android project?</p> <p>3 MR. PAIGE: Object to the form.</p> <p>4 THE WITNESS: Not that I'm specifically aware</p> <p>5 of. Most of these guys I don't think I ever talked with. 13:25:30</p> <p>6 Certainly -- I mean, but yeah, I can't say conclusively</p> <p>7 one way or the other. But I'm not aware of them doing</p> <p>8 so.</p> <p>9 Q. BY DR. PETERS: All right. Towards the</p> <p>10 bottom of the first page of this 2005 email, you wrote: 13:25:57</p> <p>11 "License choice is important."</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Why is license choice important for the</p> <p>15 Android project? 13:26:11</p> <p>16 A. Well, based on the email itself -- I quote</p> <p>17 myself here -- one of the goals of this project is to</p> <p>18 provide an open source system that's appealing to handset</p> <p>19 OEMs. The Linux kernel is GPL, but all the pieces above</p> <p>20 the kernel that we're using or building so far are under 13:26:29</p> <p>21 much friendlier licenses, BSD or MIT-style typically.</p> <p>22 Bringing in third-party commercial solutions is tricky</p> <p>23 for this reason, too, unless we plan on buying them</p> <p>24 outright or otherwise convincing them to release their</p> <p>25 software under an open source license." 13:26:50</p>	<p style="text-align: right;">Page 85</p> <p>1 Other than that, there are one or two small</p> <p>2 libraries, like, you know, BlueZ, the Bluetooth stack,</p> <p>3 that's GPL. But the vast majority, on the order of many</p> <p>4 millions of lines of code of the Android user space is</p> <p>5 Apache 2 or BSD-style licensed. 13:29:04</p> <p>6 Q. Did Google ever consider releasing the Dalvik</p> <p>7 code or the Android Java core libraries under anything</p> <p>8 other than an Apache or BSD-style license?</p> <p>9 MR. PAIGE: Object to the form.</p> <p>10 THE WITNESS: Not that I'm aware of, no. 13:29:24</p> <p>11 Q. BY DR. PETERS: And that's because a</p> <p>12 GPL-style license for Dalvik and the core libraries would</p> <p>13 not have been satisfactory to downstream OEMs and other</p> <p>14 developers?</p> <p>15 MR. PAIGE: Object to the form. 13:29:48</p> <p>16 THE WITNESS: I would characterize kind of</p> <p>17 the other direction. It was more that we specifically</p> <p>18 wanted permissive licenses. So something like the GPL</p> <p>19 does not really fall into that body, given it's -- you</p> <p>20 know, its complex requirements. 13:30:06</p> <p>21 The Apache 2 was the recommended permissive</p> <p>22 license based on recommendations from the Google Open</p> <p>23 Source Programs Office and legal department.</p> <p>24 Q. BY DR. PETERS: Is it fair to say that the</p> <p>25 OEMs required an Apache-style nonrestrictive license or 13:30:28</p>

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Exhibit 2 to Mullen Declaration - Deposition Testimony of Brian Swetland

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<p style="text-align: right;">Page 138</p> <p>1 license?</p> <p>2 A. The intent here, I believe, again, is that</p> <p>3 they are -- they are non-permissive, you know, licenses,</p> <p>4 which when combined with other work, you know, cause</p> <p>5 issues -- compliance issues around source release and 15:32:48</p> <p>6 redistribution and so on.</p> <p>7 Q. Okay. So this will be -- this is another</p> <p>8 earlier exhibit number, 72.</p> <p>9 What is Exhibit 72?</p> <p>10 A. It apparently is an email from an engineer on 15:33:56</p> <p>11 the Android team. Give me a moment to read it here.</p> <p>12 So this appears to be an email thread</p> <p>13 discussing Sun's announcement of open sourcing Java.</p> <p>14 Q. So Sun did open source Java at the end of</p> <p>15 2006; is that your recollection? 15:35:25</p> <p>16 A. I believe that's the case, though this may</p> <p>17 be -- this implies -- this implies that, yeah, the --</p> <p>18 what is it? Does it say specifically here? The email</p> <p>19 thread seems to imply that, yes, that's when it happened.</p> <p>20 Q. Mr. Baust wrote: "I would already be happy 15:35:57</p> <p>21 if we can just drop in their libraries, but still not</p> <p>22 sure it's compatible with their license choices."</p> <p>23 Would you have been happy to drop in Sun's</p> <p>24 libraries into Android at that point?</p> <p>25 A. Based on the specifics of their licensing, 15:36:16</p>	<p style="text-align: right;">Page 140</p> <p>1 understanding of the license options provided on this</p> <p>2 open source release were that the mobile -- you know, the</p> <p>3 mobile -- the smaller version of these libraries that</p> <p>4 would be appropriate for the Android platform had a</p> <p>5 license that was incompatible with the license chosen for 15:38:26</p> <p>6 the Android platform.</p> <p>7 Q. BY DR. PETERS: And the -- just because I'm</p> <p>8 having trouble getting a "yes" or "no" answer from you,</p> <p>9 the Sun core libraries were made available under license</p> <p>10 for no charge by Sun; is that right? 15:38:49</p> <p>11 MR. PAIGE: Object to the admonishment and to</p> <p>12 the form.</p> <p>13 THE WITNESS: The -- my understanding is that</p> <p>14 they were available under the GPL license, which does not</p> <p>15 have a direct monetary charge associated, but has a 15:39:09</p> <p>16 series of restrictions and requirements that, you know,</p> <p>17 restrict the use of, you know, software under that</p> <p>18 license.</p> <p>19 Q. BY DR. PETERS: And the -- and so even though</p> <p>20 Sun's Open Source Java was available without charge, the 15:39:38</p> <p>21 license restrictions were nevertheless not acceptable to</p> <p>22 Google.</p> <p>23 Do I have that right?</p> <p>24 MR. PAIGE: Object to the form.</p> <p>25 THE WITNESS: Again, it is difficult for me 15:39:54</p>
<p style="text-align: right;">Page 139</p> <p>1 no, because they would be incompatible with our policy of</p> <p>2 not using GPL for core libraries.</p> <p>3 Q. So I'm -- and so Google for Android, in any</p> <p>4 event, did not end up including Sun's open source Java</p> <p>5 core libraries in Android? 15:36:45</p> <p>6 A. The decision was made specifically not to do</p> <p>7 so because the term -- the terms of the licensing were</p> <p>8 inappropriate for the platform.</p> <p>9 Q. Because I do want to be very clear about it,</p> <p>10 Sun offered the core libraries for no charge, and Google 15:37:02</p> <p>11 did not accept them; is that correct?</p> <p>12 MR. PAIGE: Object to the form.</p> <p>13 THE WITNESS: Sun released their libraries</p> <p>14 under a specific license, which for the mobile version of</p> <p>15 their platform would have made it impossible for OEMs and 15:37:18</p> <p>16 potentially developers to develop commercial software for</p> <p>17 that platform, which made it a -- you know, from a</p> <p>18 license standpoint, useless for Android.</p> <p>19 Q. BY DR. PETERS: So it was to protect OEMs and</p> <p>20 commercial developers that Google did not incorporate a 15:37:46</p> <p>21 free-of-charge version of Sun's core libraries into</p> <p>22 Android; is that right?</p> <p>23 MR. PAIGE: Object to the form.</p> <p>24 THE WITNESS: Again, I can't necessarily</p> <p>25 speak for all the business-level decisions, but my 15:38:06</p>	<p style="text-align: right;">Page 141</p> <p>1 to speak for Google. From my understanding of the</p> <p>2 project goals, yes, the license terms were incompatible</p> <p>3 with the goals of the project.</p> <p>4 Q. BY DR. PETERS: You wrote in Exhibit 72, this</p> <p>5 November 13th, 2006 email: "It would be nice if somebody 15:40:19</p> <p>6 made a stink about this and called Sun on it should it</p> <p>7 turn out to be correct, which I expect is likely. Sadly,</p> <p>8 nobody ever does call them on stuff like this."</p> <p>9 What would you call Sun on?</p> <p>10 A. I believe what I'm referring to here is the 15:40:37</p> <p>11 fact they're generating significant press around how open</p> <p>12 and unrestricted and, you know, wonderful Java is, when</p> <p>13 in fact, the decision they clearly made here in, you</p> <p>14 know, creating, you know, field-of-use barriers to the</p> <p>15 language actually prevents it from being used openly in, 15:41:00</p> <p>16 you know, whole classes of products.</p> <p>17 That's a subtle issue, and it's not an issue</p> <p>18 that articles talking about how awesome it was that</p> <p>19 Sun -- or that Java is open source seemed to pick up on.</p> <p>20 Q. But Linux is licensed under the GPL, isn't 15:41:18</p> <p>21 it?</p> <p>22 A. The Linux kernel is licensed under the GPL,</p> <p>23 with a specific carve-out that says that user space code</p> <p>24 running on that kernel is not affected by that license,</p> <p>25 which is similar to the Classpath exception that Sun 15:41:40</p>

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<p style="text-align: right;">Page 142</p> <p>1 makes only for the desktop or server version of their 2 Open Source Java release. 3 Q. But why would -- why would applications 4 running in user space on, you know, a GPL Java Virtual 5 Machine get affected with GPL obligations? 15:42:03 6 MR. PAIGE: Object to the form. 7 THE WITNESS: I'm not a lawyer. I can't 8 speak to all the ends of it. There are certainly people 9 who claim that the mere act of linking your program with 10 the GPL library requires that your program be GPL'd. 15:42:20 11 Q. BY DR. PETERS: Would -- looking back at the 12 November 13, 2006 email, would you agree with Mr. Turner 13 that there were millions of royalties to be made in cell 14 phone, set top boxes, and even Blu-Ray players? 15 A. I really can't assess, you know, what the 15:42:47 16 actual level of royalties were likely to be. 17 Q. Did you think that Sun open sourced Java in 18 the way that you describe here in order to protect its 19 royalty stream? 20 MR. PAIGE: Object to the form. 15:43:14 21 THE WITNESS: Speaking purely personally, my 22 analysis of -- you know, again, I'm not a lawyer so what 23 value does my analysis have, but you know, my read of 24 them releasing the desktop and server edition with a 25 clear exception that claims there is no tainting or 15:43:31</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Possibly, yes. 2 Q. In your -- have you had experience detangling 3 libraries like that? 4 A. I'm trying to think of specific examples. I 5 mean, I have looked at, say, open source projects. Well, 15:45:38 6 Freetype is, you know, something that's very modular, and 7 you can pick and choose which components you need. I've 8 seen other projects -- I'm having trouble thinking of 9 specific ones -- where there's a lot of functionality but 10 it's kind of spaghetti, and taking it from it does all 15:46:01 11 these things to it does just what you need is a lot of 12 work. 13 DR. PETERS: Okay. This might be good time 14 for another break, I think. 15 THE WITNESS: Okay. 15:46:14 16 THE VIDEOGRAPHER: This marks the end of 17 Disk 3 to the deposition of Brian Swetland. The time is 18 now 3:46 p.m., and we're going off the record. 19 (Recess.) 20 THE VIDEOGRAPHER: This marks the beginning 15:59:29 21 of Disk 4 to the deposition of Brian Swetland. The time 22 is now 3:59 p.m., and we are back on the record. 23 DR. PETERS: Go to the next exhibit, please. 24 (Exhibit 188 was marked for identification.) 25 Q. BY DR. PETERS: What is Exhibit 188? 16:00:08</p>
<p style="text-align: right;">Page 143</p> <p>1 license issues and releasing the mobile version without 2 such protection would seem to imply that they would like 3 to, you know, seek a revenue stream or some other, you 4 know, benefit from that. 5 Otherwise, why would they restrict the 15:43:48 6 Classpath license that clearly allows linking without 7 issue to only the desktop and server product. 8 Q. BY DR. PETERS: Why wouldn't you take the 9 desktop version which had that -- that exception and 10 modify it as you wish to make it as small as you like for 15:44:14 11 a mobile computer like an Android device? 12 MR. PAIGE: Object to the form. 13 THE WITNESS: I'm not sure. You know, there 14 is -- that's conceivably a significant amount of work. 15 The large Java libraries which I think at the time were 15:44:33 16 30 megabytes compressed for desktop Java are potentially 17 highly intertwined and self referential and dependent. 18 It -- you know, again, I don't know specifically, but my 19 suspicion would be taking that desktop product and 20 cleaning it up in such a way that it would be workable 15:44:57 21 for mobile would be a significant engineering effort. 22 Q. BY DR. PETERS: So it would be a 23 significant -- could be a significant engineering effort 24 to untangle intertwined libraries that had been written 25 to go with each other? 15:45:20</p>	<p style="text-align: right;">Page 145</p> <p>1 A. It appears to be an email from me to Dan 2 Bornstein in March of 2007. 3 Q. And here you write: "To derail further 4 questions which probably should not occur on the mailing 5 list for the usual reasons." 16:00:31 6 What are the usual reasons for not having 7 questions on the mailing list? 8 A. By policy, it is requested that discussions 9 of legal, contractual concern, so on, are undertaken with 10 the legal department and not speculated about by 16:00:49 11 engineers on email and other forums. 12 Q. And here when you write "legal contractual 13 hurdles imposed by a certain external entity," are you 14 referring to Sun? 15 A. Probably. It would seem to be the logical 16:01:09 16 entity in question regarding things like the TCK. 17 Q. What were the -- what would be the legal 18 contractual hurdles to run the TCK on Android? 19 MR. PAIGE: Object to the form. 20 THE WITNESS: I do not recall the specifics. 16:01:29 21 Q. BY DR. PETERS: Did you ever discuss with 22 Andy Rubin whether or not to run TCK on Android? 23 A. I don't know. 24 Q. You just don't recall or you think you did or 25 did not? 16:01:48</p>

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